

Examining the Adequacy and Enforcement of Our Nation's Immigration Laws
U.S. House Judiciary Committee
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Thank you, Chairman Goodlatte and Ranking Member Conyers, for the opportunity to testify on the state of immigration law enforcement and how it might be improved. Currently immigration law enforcement is in a state of collapse. The vast majority of illegal aliens face no threat of deportation (regardless of when or how they arrived); new illegal arrivals continue from land, air and sea; and the size of the illegal population stopped declining several years ago. The Obama administration's deliberate dismantling of enforcement has imposed enormous costs on American communities in the form of lost job opportunities and stagnant wages for native workers, higher tax bills to cover increasing outlays for social services and benefits, compromised national security, and needless public safety threats. One of the most urgent tasks now before Congress is to restore integrity to our immigration laws by ending the massive catch and release scheme put in place by the Obama administration, implementing more effective deterrents to illegal settlement, and providing the tools for more efficient enforcement.

Dramatic Decline in Enforcement – Statistics published by the Department of Homeland Security (DHS) show clearly that over the last several years, even as illegal border crossings have grown and the number of overstaying visitors is large, the number of deportations has plummeted and the number of illegal aliens allowed to stay and work in the United States has increased. The drop in enforcement activity has become particularly acute since the President's executive action went into effect in late November, 2014.

- 1) *Border Crossing Attempts.* Since 2011, the number of illegal crossers apprehended by the Border Patrol has increased from by 43 percent, from 340,000 to 487,000.¹ It is generally believed that border apprehensions are an indicator of the number of attempted illegal border crossings, and that approximately half of those who attempt illegal entry are successful. U.S. Customs and Border Protection (CBP) states that "The uptick is largely due to the increase in unaccompanied children and family units who turned themselves in to Border Patrol agents in South Texas this summer." These cases totaled 137,000 in 2014 alone.

Although the apprehensions statistics are concerning enough, they do not tell the whole story. CBP has yet to disclose how all these cases were disposed of – that is, how many of those apprehended were removed or returned, and how many were released into the United States? Of those released, how many have concluded their immigration proceedings or absconded from those proceedings? For example, separate government statistics indicate that only a few hundred of the surge arrivals have been deported.²

- 2) *Overstays.* It is generally accepted that 40 percent of the illegally residing population is comprised of aliens who overstayed beyond the time or purpose authorized by their status.

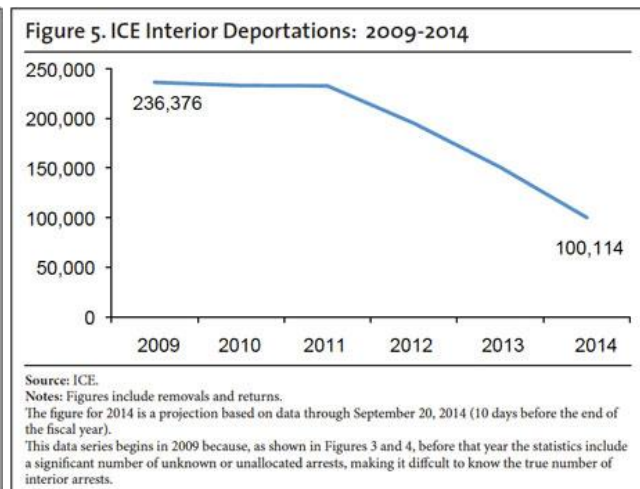
¹ John F. Simanski, *Immigration Enforcement Actions: 2013*, Department of Homeland Security, http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf and the "CBP Border Security Report, Fiscal Year 2014," published by U.S. Customs and Border Protection.

² Testimony of Jessica M. Vaughan, House Immigration subcommittee, December 10, 2014, <http://cis.org/node/5796>.

According to an unpublished report I have reviewed that was prepared by the DHS based on arrival and departure records, in 2012 approximately 263,000 aliens who were admitted on B-1 or B-2 visitor visas or under the Visa Waiver Program were identified as having remained in the country beyond their authorized duration of stay.³

Overstayers are not a high priority for deportation. In 2013, only three percent (11,596 out of 368,485) of the aliens deported by U.S. Immigration and Customs Enforcement (ICE) were overstays.⁴

- 3) *DHS Deportations.* Total deportations by all three DHS immigration enforcement agencies (Border Patrol, ICE and CBP-OFO) have declined by 37 percent since 2009, from 978,000 to 616,000. This has occurred despite an increasing number of apprehensions and continuing overstay arrivals.⁵
- 4) *Interior Deportations.* The number of ICE deportations from the interior has dropped 58 percent since the peak in 2009, from 236,000 to 102,000 in 2014.⁶



- 5) *Criminal Deportations.* The number of criminal aliens deported from the interior has declined by 43 percent since 2012, from 153,000 to 87,000, despite increases in the number of criminal aliens encountered and screened by officers.

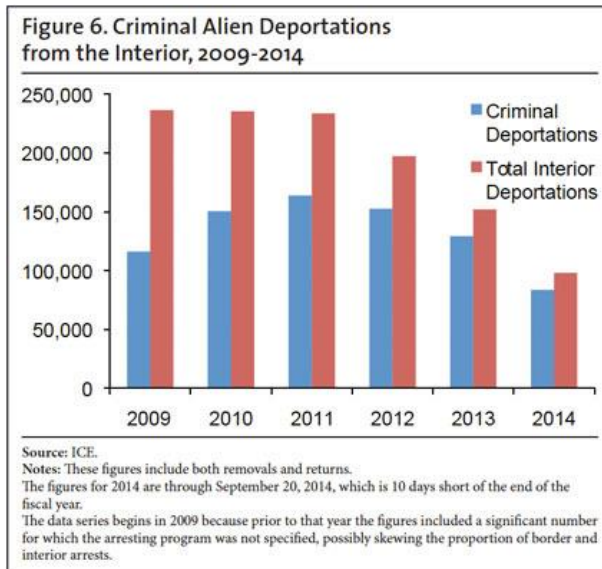
In 2014, ICE deported 69,000 fewer criminals from U.S. communities than it did in 2012. This has occurred despite the fact that ICE has the ability to identify more criminal aliens than ever before, thanks to the nationwide implementation of the Secure Communities program, which links the DHS databases to the national fingerprint matching system.

³ Department of Homeland Security, "Nonimmigrant Overstays: Fiscal Year 2012," unpublished report reviewed by author.

⁴ Source is a database of all ICE removals in 2013 obtained through a FOIA request, using the Entry Status classification, and includes all those labeled non-immigrants, Border Crossing Card holders, temporary workers, students, and other temporary categories of admission.

⁵ DHS Office of Immigration Statistics yearbooks and annual reports, http://www.dhs.gov/immigration-statistics?utm_source=frequent_page&utm_medium=web&utm_campaign=dhs_frp.

⁶ Jessica M. Vaughan, "ICE Enforcement Collapses Further in 2014," Center for Immigration Studies, <http://cis.org/ICE-Enforcement-Collapses-Further-2014>.



- 6) *Criminal Releases.* In 2013, ICE released 36,007 convicted criminal aliens from its custody.⁷ Of these, 193 had homicide convictions, 426 had sexual assault convictions, and 303 had kidnapping convictions. As of September, 2014, 5,700 of them (16 percent) had been arrested again for subsequent offenses, and 1,000 have been again convicted. ICE has taken only 1,600 back into custody.⁸

In 2014, ICE released another 30,000 convicted criminal aliens.⁹

As of September, 2014, there were 166,781 convicted criminal aliens who had received final orders of removal who had not departed but were still at large in the United States after release by ICE. In addition, there were 174,283 convicted criminals with pending deportation proceedings who were at large in the United States, released by ICE.¹⁰

Moreover, many convicted criminal aliens are allowed to walk out of ICE custody without being enrolled in a program of supervision. For example, ICE officer report that fewer aliens are being enrolled in the Intensive Supervision Appearance Program (ISAP), in which criminal aliens wear an electronic monitoring bracelet and check in frequently with monitors. I am told that while once this program was used frequently for lower level offenders, now it is rarely used, in favor of allowing the criminal alien to bond out without supervision. Members of this committee may wish to ask ICE to disclose how frequently this program is being used to supervise criminal aliens after release, which type of aliens are required to participate compared with prior years, and how many of these aliens have re-offended.

⁷ Jessica M. Vaughan, "ICE Document Details 36,007 Criminal Alien Releases in 2013," Center for Immigration Studies: <http://cis.org/ICE-Documents-Details-36000-Criminal-Aliens-Release-in-2013>.

⁸ DHS records provided to Sen. Chuck Grassley, released on January 30, 2015, <http://www.grassley.senate.gov/sites/default/files/news/upload/Immigration%2C%2001-30-15%2C%20Breakdown%20of%20Subsequent%20Crimes%20List.pdf>.

⁹ Testimony of DHS Secretary Jeh Johnson before the House Homeland Security Committee on December 2, 2014.

¹⁰ ICE Weekly Departures and Detention Report, September 22, 2014: http://cis.org/sites/cis.org/files/wrd-9-22-14_0.pdf.

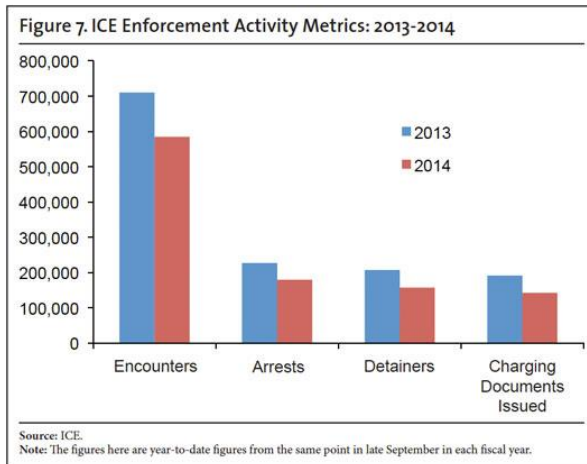
- 7) *Gang Arrests.* Although gang members are said to be a high priority for enforcement, in fact the number of gang member arrests by Homeland Security Investigations (HSI) agents has declined considerably. According to ICE records, the number of gang arrests declined from 5,080 arrests to 3,917 arrests from 2012 to 2013, a drop of 23 percent. The 2013 total is the lowest number of gang arrests since 2008.¹¹

Further, ICE gang investigators have expressed concerns to me that gang members they arrest (usually after conviction on state charges) and turn over to Enforcement and Removal Operations (ERO) for detention and removal processing are sometimes de-prioritized and released – and even allowed to apply for work permits -- which can unravel their prosecution and removal case, not to mention threaten public safety.

ICE officers also report that informants who once agreed to work for ICE to help dismantle major gang conspiracies in exchange for the ability to stay here now are telling ICE that they have no incentive to do so, because they qualify for the president’s amnesty or know that they can take advantage of “prosecutorial discretion” policies. One gang investigator told me that some illegal alien gang members actually taunt ICE agents, knowing they are now virtually untouchable for deportation.

- 8) *ICE Metrics.* Interior enforcement activity as measured by all of the other key metrics tracked by ICE – encounters, arrests, detainers and charging documents issued -- show declines in recent years. In 2014, deportation processing was initiated for approximately 143,000 aliens out of the 585,000 aliens encountered by ICE agents. Tens of thousands of those let go had been labeled a criminal threat.¹²

ICE officers have told me that since the administration’s policies of prosecutorial discretion were expanded, they are processing a small fraction of the number of aliens that they used to process. One recently told me that his office used to process as many as 100 aliens per day but, since the president’s executive actions went into effect, now they are processing closer to five aliens per day, with the same staff and budget – meaning the government is spending perhaps 20 times more in resources to deport each alien as was the case before. This reality suggests that the president’s executive actions were less about prioritizing resources and more about protecting illegal aliens.



¹¹ Source is ICE records obtained by the author through a FOIA request.

¹² Ibid.

- 9) *The Non-Departed.* The number of aliens who have received a final order of removal, but who are still in the United States, has risen to nearly 900,000 as of September, 2014.¹³ This number has grown by 40,000 in just two years. Part of the reason is that, even with the administration's mass dismissals of "non-priority" cases in lieu of immigration hearings, many of the aliens whose case are completed and who are ordered removed simply do not comply if they are not detained. They were never a priority for enforcement under this administration, but now the president's recent executive action specifically nullified all removal orders and enforcement actions involving "non-criminals" taken before January 1, 2014.
- 10) *Legal Action.* One factor behind the erosion of enforcement has been a steady stream of predatory law suits aimed at obstructing ICE from doing its job. The administration has contributed to the success of these lawsuits by declining to challenge them; offering prompt settlements; withholding assistance from local enforcement partners; and issuing controversial policy statements, sometimes without sound legal foundation, that can be used by plaintiffs hostile to the government's mission. If one were to think of immigration litigation against the government and its enforcement partners as a game, then the Obama administration is throwing it.

One prime example is ICE's abandonment of detainers as an enforcement tool – a perfectly legitimate, lawful tool that not only helps ICE do its important job, but protects the public and ICE officers as well. The administration is pretending that it abandoned this tool because of unfavorable court rulings, but in fact top agency leaders initiated the dubious policy statements that were simply accepted by the courts – leaving ICE's local law enforcement partners who had cooperated in good faith (and in compliance with actual federal regulations) twisting in the wind and subject to significant legal and financial liability.¹⁴ The final nail in the coffin came in one of the November 2014 executive action memos declaring the "end of Secure Communities" by prohibiting ICE officers from issuing detainers in all but rare cases.

- 11) *Suspension of Laws That Deter Frivolous Asylum Claims and Smuggling of Family Members.* Obama administration policy changes have significantly increased incentives for aliens to claim fear of return to their homeland, political asylum, or pay human smugglers to bring family members into the United States illegally. Instead of keeping these new illegal arrivals in custody near the border and promptly repatriating the vast majority who are unqualified, the administration has changed policies to allow them to live and work in the United States indefinitely, under the guise of what it calls "deportation proceedings." Just this week, the Department of Justice announced that potentially tens of thousands of so-called "non-priority" deportation cases would be granted postponements to November, 2019 – giving these illegal aliens nearly five more years to live and work in this country.¹⁵
- 12) *Failure to Enforce REAL ID Provisions.* According to documents leaked by a Transportation Security Administration (TSA) whistleblower, illegal aliens who have been issued a state driving privilege card are permitted to use the card for federal purposes such as boarding an airplane. This policy makes life more convenient for illegal aliens and anyone fraudulently obtaining one of these cards, but is a flagrant disregard of the REAL ID Act, and poses a serious risk to security for the public.
- 13) *Dismantling Worksite Enforcement and Fraud Control.* Successful programs to address illegal employment (the main magnet for illegal immigration), identity theft, and benefits fraud have

¹³ Ibid.

¹⁴ See Dan Cadman and Mark H. Metcalf, *Disabling Detainers: How the Obama Administration Has Trashed a Key Immigration Enforcement Tool*, Center for Immigration Studies, January, 2015: <http://cis.org/disabling-detainers>.

¹⁵ Devlin Barrett, "U.S. Delays Thousands of Immigration Hearings By Nearly Five Years," *Wall St. Journal*, January 28, 2015, http://www.wsj.com/article_email/justice-department-delays-some-immigration-hearings-by-5-years-1422461407-1MyQjAxMTExOTUyODk5Wj.

been de-prioritized and starved of resources, nearly to extinction. This ensures that those who make it past the Border Patrol or through visa controls can work illegally, steal identities, use false documents, make false claims, avoid taxes, collect social services, and commit traffic offenses, all without much fear of punishment or removal. There is no more powerful incentive for people to keep trying to come here illegally than the realistic understanding that you will be allowed to stay and that the crimes and infractions committed in connection with your illegal status will be ignored. Moreover, without meaningful worksite enforcement, there is no incentive for employers to maintain a legal workforce, and they will continue to hire illegal workers.

Fallout from Failing to Remove Deportable Aliens –

- 1) *Issuance of Work Permits.* In addition to suspending enforcement against all but the most egregious violators, the Obama administration has egregiously abused its ability to issue work permits. According to USCIS records, from 2009 to 2014, the agency issued 5,461,568 *new* work permits to aliens – these are work permits issued *in addition to* legal immigrant and guest worker admissions. Of these 5.5 million new work permits, more than 3 million were issued to illegal aliens and aliens admitted on temporary business, tourist, visa waiver, or student visa statuses that do not allow employment.

Included among the 3 million new work permit holders are many aliens who do not qualify for any legal status and are in deportation proceedings. This includes: aliens who were arrested by ICE but released on an order of supervision; aliens seeking suspension of deportation or a stay of removal; criminal and non-criminal aliens ordered removed but whose countries will not take them back; asylum applicants; and illegal aliens granted parole into the country after arriving from Central America in the border surge of 2012-14.

- 2) *Public Safety Hazards.* There is a human cost to the policies that prevent ICE officers from arresting, detaining and removing illegal aliens who have committed crimes and engaged in reckless behavior such as drunk and/or reckless driving. Some recent examples:

Katerin Gomez, age 35 and mother of three children under age 13, was killed in Chelsea, Massachusetts on October 18, 2014 by a stray bullet through her window. The gun was fired during a street brawl allegedly by Hector Ramires, a 21-year old illegal alien member of the notoriously violent MS-13 gang, who was at large awaiting trial for two prior arrests for armed robbery (one with a gun, one with a knife), in which his illegal status and gang membership were noted. The police report also includes mention of prior criminal involvement in his home country of Honduras. ICE did not issue a detainer nor initiate deportation proceedings after either prior arrest, nor did it make an effort to charge Ramires as an illegal alien in possession of a firearm, which is a felony punishable by up to 10 years in prison.

Grant Ronnebeck, age 21, was killed while working at a convenience store in Mesa, Arizona on January 22, 2015. The accused is Apolinar Altamirano, one of the 36,007 convicted criminals freed by ICE in 2013. Altamirano had a gang and drug-related felony burglary conviction but was released by ICE without supervision to await an immigration court hearing, still pending after two years.

Magno Sosa, age 32, was shot twice in the head and killed on January 17, 2015 in Everett, Massachusetts. The accused is Rigoberto Escobar, an illegal alien who was out on pretrial probation for assault and battery with a dangerous weapon and assault and

battery on a police officer. Again, ICE had declined to issue a detainer or pursue immigration charges after the assault and battery arrests, most likely because of policies forbidding officers from initiating charges on illegal aliens who have not yet been convicted.

Numerous reports show that illegal aliens who are released back into the community instead of detained for prompt removal have a high likelihood of re-offending. Senior ICE officials have told me that about 50 percent of arrested aliens freed from ICE custody or freed by local law enforcement agencies in defiance of detainers have re-offended.

Short Term Action Congress Can Take to Address Enforcement Needs

- A. Restrict DHS appropriations so that no funds may be used to implement any executive actions or policy directives that prevent enforcement officers from performing their jobs and/or allow large classes of illegal aliens to avoid deportation and receive work permits.
- B. Prevent illegal employment with a phased-in universal E-Verify mandate and other measures to boost employer compliance and address identity theft.
- C. Authorize and direct the Border Patrol to keep illegal border crossers in custody in the immediate border region, and that the only form of due process available shall be Expedited Removal.
- D. Clarify the authority and imperative for the transfer of aliens from local to federal custody for enforcement. Impose sanctions on local governments that obstruct the process.
- E. Provide funding for an increase in detention capacity for immigration enforcement agencies, and require that DHS use it for that purpose.
- F. Clarify ICE's authority to use accelerated forms of due process, especially for recent border crossers and criminal aliens, in order to relieve pressure on the immigration courts.
- G. Restore funding and flexibility to programs such as 287(g) that enhance ICE deportation capacity and address local public safety needs.
- H. Revise the fee collection and expenditure process for USCIS to prevent the use of fees paid by legal immigrants and sponsors for any purpose not specifically authorized by Congress. This would prevent the executive branch from diverting immigrants' fees away from the legal processing system and anti-fraud efforts.
- I. Mandate the next step toward implementation of a biometric entry-exit tracking system, whether implementation of biometric exit and air and sea, or implementation of biometric entry data collection from all non-citizen land arrivals.
- J. Withhold approval for any relaxation in visa issuance procedures, interview requirements or visa waiver program expansion until anti-fraud programs are enhanced and the annual number of new overstays is reduced by 50 percent.
- K. Clarify the categories of aliens who may be issued work permits, and examine the merits of a bar on issuing work permits to aliens in deportation proceedings.

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